THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Zango, Inc., f/k/a 180solutions, Inc., a Washington corporation, a/k/a MetricsDirect, Plaintiff, v. Internet Brands, Inc., a Delaware Corporation d/b/a Cars Direct, Defendant.	No. CV 7-506 RSL PLAINTIFF ZANGO, INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO DEFENDANT INTERNET BRANDS, INC.'S COUNTERCLAIM

COMES NOW plaintiff Zango, Inc. to admit, deny, and aver in response to defendant Internet Brands, Inc.'s counterclaim as follows:

ANSWER TO COUNTERCLAIM

1. Plaintiff admits the allegations in paragraph 1 of the Counterclaim.

2. Plaintiff admits the allegations in paragraph 2 of the Counterclaim.

3. Answering paragraph 3, Plaintiff admits that it entered into a contract with defendant Internet Brands to provide Internet Brands with Internet advertising. Plaintiff Zango further admits that it is one of the leading providers of Internet search marketing solutions and, specifically, Internet advertising targeted to the goods and services prospective customers are researching or shopping for online. Plaintiff denies that 180technologies was a "division" of 180solutions, Inc. Except as explicitly admitted or denied, Plaintiff is without sufficient information either to admit or deny the other allegations in this paragraph and therefore it denies the same.

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4. Answering paragraph 4, Plaintiff is without sufficient information either to admit or deny the allegations in paragraph 4 and therefore it denies the same.

5. Answering paragraph 5, Plaintiff admits that web users who install Plaintiff's software program (and thereby gain free access to content such as games, screen savers, and video downloads) do so voluntarily and with the understanding that, in a model much like network television, they will have free access to content in exchange for viewing targeted advertising presented to them when they are engaged in Internet research and shopping. Plaintiff further admits that it fully explained this model to Internet Brands on many occasions, including prior to Internet Brands entering into a contract with Plaintiff for the delivery of advertisements. Plaintiff denies that the ads it presents to users "flash" to those users. Except as explicitly admitted or denied, Plaintiff is without sufficient information either to admit or deny the other allegations in this paragraph and therefore it denies the same.

6. Plaintiff denies the allegations in paragraph 6 of the Counterclaim.

7. Plaintiff admits the allegations in paragraph 7 of the Counterclaim.

8. Plaintiff admits that it is capable of determining where the traffic originated (as was (and is) Internet Brands itself, independently), but denies the remainder of this allegation.

9. Answering paragraph 9, Plaintiff is without sufficient information either to admit or deny the allegations in paragraph 9 therefore it denies the same.

10. Answering paragraph 10, Plaintiff admits that traffic that originates only from the United States is more expensive than traffic containing non-U.S. consumers. Except as explicitly admitted, Plaintiff is without sufficient information either to admit or deny the other allegations in this paragraph and therefore it denies the same.

11. Answering paragraph 11, Plaintiff admits that Internet Brands requested a refund based on its alleged lack of understanding regarding international traffic and that Plaintiff again explained (as it did prior to Internet Brands entering into a written agreement with Plaintiff) that

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traffic that originates only from the United States is more expensive than traffic containing non-U.S. consumers. Plaintiff admits that a portion of the funds paid to Plaintiff by Internet Brands for Internet traffic was directly related to international traffic. Except as explicitly admitted, Plaintiff is without sufficient information either to admit or deny the other allegations in this paragraph and therefore it denies the same.

12. Answering paragraph 12, Plaintiff admits that Internet Brands has refused to pay for $419,827.26 in services that it contracted for with Plaintiff, but denies that Internet Brand has any valid basis for not paying these invoices. Plaintiff further admits that after its repeated demands for payment from Internet Brands were refused by Internet Brands, Plaintiffs was forced to proceed with its complaint in this matter to enforce its contact with Internet Brands.

13. Answering paragraph 13, Plaintiff admits that it did terminate all work for Internet Brands when Internet Brands refused to pay for services that it had contracted for and received from Plaintiff.

14. Plaintiff responds to paragraph 14 of the counterclaim by incorporating its responses to paragraphs 1-13 of the counterclaim.

15. The allegations in paragraph 15 of the counterclaim are denied.

16. The allegations in paragraph 16 of the counterclaim are denied.

17. Plaintiff responds to paragraph 17 of the counterclaim by incorporating its responses to paragraphs 1-16 of the counterclaim.

18. The allegations in paragraph 18 of the counterclaim are denied.

19. Plaintiff responds to paragraph 19 of the counterclaim by incorporating its responses to paragraphs 1-18 of the counterclaim.

20. The allegations in paragraph 20 of the counterclaim are denied.

21. The allegations in paragraph 21 of the counterclaim are denied.

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22. Plaintiff responds to paragraph 22 of the counterclaim by incorporating its responses to paragraphs 1-21 of the counterclaim.

23. The allegations in paragraph 23 of the counterclaim are denied.

24. The allegations in paragraph 24 of the counterclaim are denied.

25. The allegations in paragraph 25 of the counterclaim are denied.

26. The allegations in paragraph 26 of the counterclaim are denied.

27. Plaintiff responds to paragraph 27 of the counterclaim by incorporating its responses to paragraphs 1-26 of the counterclaim.

28. While Plaintiff is one of the leading providers of Internet search marketing solutions and, specifically, Internet advertising targeted to the goods and services prospective customers are researching and shopping for online, the allegations in paragraph 28 of the counterclaim are denied.

29. The allegations in paragraph 29 of the counterclaim are denied.

30. With regard to the section headed “REQUEST FOR RELIEF” following paragraph 29 of the counterclaim and prior to “DATED: May 25, 2007,” Plaintiff denies the allegations contained therein and denies that Internet Brands is entitled to any recovery of any damages whatsoever from Plaintiff.

31. Plaintiff specifically denies that Internet Brands has met the proof requirements to prove any elements of its claims asserted in its Counterclaim and, further, asserts that Internet Brands has failed to establish by relevant credible evidence any of its alleged claims, damages, or right(s) to recovery herein.

32. Plaintiff denies any and all allegations of the Counterclaim direct against Plaintiff that have not been otherwise specifically addressed above.

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AFFIRMATIVE DEFENSES TO COUNTERCLAIMS

1. Failure to State a Claim. Internet Brands fails to state a claim upon which relief may be granted.

2. Failure to Mitigate. Internet Brands failed to mitigate its damages, if any.

3. Contributory/Comparative Negligence. Internet Brands caused its own damages, if any.

4. Counter Claimant's Breach. Internet Brands breached the contract on which it is suing.

5. Nonperformance of Condition Precedent. Internet Brands has failed to show its full/material compliance with the agreement(s) on which it is suing.

6. Consent. Internet Brands consented to all/some of the actions about which it complains.

7. Ratification. Internet Brands ratified all/some actions of which it now complains.

8. Unclean Hands. Internet Brands unclean hands, and/or other lack of equity, preclude its recovery.

9. Estoppel. Internet Brands is estopped from asserting claims against Plaintiff.

10. Waiver. Internet Brands waived its right to assert the claims it is asserting against Plaintiff.

11. Offset. To the extent that the defendant Internet Brands is entitled to damages, those damages should be offset by amounts owed to defendant.

12. Plaintiff reserves the right to assert additional affirmative defenses as factual support is developed and discovery in this matter progresses.

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WHEREFORE, Plaintiff prays for relief as follows:

1. That Internet Brands' counterclaim be dismissed with prejudice;

2. That Plaintiff be awarded its costs in defense of Internet Brands' counterclaim, including reasonable attorneys' fees, as allowed by law;

3. That Plaintiff be awarded all of the relief sought in its Complaint;

4. For such other and further relief as the Court deems just and equitable.

DATED this Thursday, June 21, 2007.

HARRIS & MOURE, pllc

/s Charles P. Moure
By___________________________________
Daniel P. Harris, WSBA # 16778
Charles P. Moure, WSBA # 23701

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of plaintiff's Answer and Affirmative Defenses to Defendant Internet Brand's Counterclaim has been made this Thursday, June 21, 2007, by filing a copy of this pleading with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

Chris R. Youtz
SIRIANNI YOUTZ MEIER & SPOONEMORE
719 Second Avenue, Suite 1100
Seattle, Washington 98104
T. 206-223-0303
F. 206-223-0246

Signed at Seattle, Washington this Thursday, June 21, 2007.

/s Charles P. Moure
Charles P. Moure

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